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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 ANTOLIN ANDREW MARKS,
10 Plaintiff,
11 v.
12 A. NEIL CLARK,
13 Defendant.

No. MC08-5045

ORDER

14 This matter comes before the Court *sua sponte*. On March 24, 2008, the
15 Honorable Franklin D. Burgess, United States District Court Judge, entered an order barring
16 plaintiff from litigating in this district unless he provides a “signed affidavit, along with the
17 proposed complaint, verifying under penalty of perjury that none of the issues raised in the
18 proposed complaint have been litigated in the past by the [p]laintiff.” Plaintiff was also barred
19 from proceeding *in forma pauperis* with a civil rights, Bivens, or Federal Tort Claim Act action
20 unless he shows that he is in imminent danger of serious bodily injury or death. On January 12,
21 2009, the Clerk of Court received a petition for writ of habeas corpus and an application to
22 proceed *in forma pauperis* from Mr. Marks. Dkt. # 23. No filing fee or affidavit was included
23 in the submission. The proposed petition is now before the undersigned for review pursuant to
24 the terms of the bar order.

25 Plaintiff’s January 12, 2009, submission does not satisfy the March 24, 2008, bar
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ORDER

1 order. Plaintiff has not verified, under penalty of perjury, that the claims asserted have not
2 already been litigated. Such a verification appears to be within his power despite the fact that he
3 has already litigated a claim of indefinite detention in Marks v. Clark, C07-1897MJP. The
4 passage of time is often a critical factor in indefinite detention cases, and plaintiff asserts that he
5 remains in immigration custody four months after Judge Pechman entered judgment against him
6 and without any hope of removal.¹

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8 The new action submitted on January 12, 2009, shall not be permitted to proceed.
9 The Clerk of Court shall docket this order in MC08-5045. Neither the Clerk of Court nor
10 defendants need take any further action with regards to this matter.

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12 Dated this 6th day of February, 2009.

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14 Robert S. Lasnik
15 Chief Judge, United States District Court
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26 ¹ Because Mr. Marks has submitted a habeas petition, he need not show that he is in imminent
danger of serious bodily injury or death in order to proceed *in forma pauperis*.